

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NOVARTIS VACCINES AND
DIAGNOSTICS, INC., et al.,

Plaintiffs,

v.

GENENTECH, INC.,

Defendant.

Case No. [5:21-cv-04874-EJD](#)

**ORDER DENYING MOTION TO
DISMISS AS MOOT**

Re: Dkt. No. 13

Before the Court is Defendant Genentech, Inc.’s (“Genentech”) motion to dismiss the complaint. Dkt. No. 13. Plaintiffs’ response to the motion to dismiss was originally due on July 15, 2021, but the parties stipulated to extend Plaintiffs’ response deadline to August 20, 2021. Dkt. No. 20. On August 20, in lieu of filing an opposition to Genentech’s motion, and before Genentech filed a responsive pleading to the original complaint, Plaintiffs filed an amended complaint. Dkt. No. 22.

A plaintiff may amend its pleading once as a matter of course within 21 days of service of a motion under Rule 12(b). Fed. R. Civ. P. 15(a).¹ An amended pleading generally supersedes an original pleading. *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.3d 1542, 1546 (9th Cir. 1989).

Accordingly, the Court DENIES Genentech’s motion to dismiss as moot. Genentech’s

¹ A Rule 12 motion is not a “responsive pleading.” See *CRST Van Expedited, Inc. v. Werner Enters., Inc.*, 479 F.3d 1099, 1104 n.3 (9th Cir. 2007).

1 deadline to respond to the amended complaint is **September 3, 2019**. Fed. R. Civ. P. 15(a)(3).

2 **IT IS SO ORDERED.**

3 Dated: August 23, 2021

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6 EDWARD J. DAVILA
United States District Judge

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United States District Court
Northern District of California